

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

AMU CORP.,	)	
	)	
Defendant-Below Appellant,	)	
	)	
v.	)	C.A. No. 2006-05-349
	)	
SHAMSHAD, LLC	)	
	)	
Plaintiff-Below Appellee.	)	

Submitted: June 14, 2006  
Decided: June 30, 2006

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**DECISION ON APPEAL FROM THE JUSTICE OF THE PEACE COURT**

This is an appeal from the Justice of the Peace Court denial of AMU's motion to vacate a summary possession in a commercial landlord proceeding.

AMU executed a lease, which was assumed by Shamshad for a term of fifteen years beginning June 1, 2002. Under the lease, AMU operated a Kennedy Fried Chicken (hereinafter "Kennedy Fried Chicken") restaurant at 2931 N. Market Street, Wilmington, Delaware. In the Justice of the Peace Court, Shamshad, LLC brought a landlord-tenant action to terminate the lease and move for possession on the basis AMU failed to pay rent, water, and sewer fees. The complaint named AMU Corp. as the defendant and

alleged failure to pay sewer charges for June 2005 thru December 2005, and rent for February 2005. The Justice of the Peace Court granted judgment by default on March 7, 2006.

The record is not completely clear, but it appears AMU moved to vacate the default judgment on April 22, 2006 after a series of other proceedings before the Court. The Justice of the Peace Court scheduled a hearing on the motion for April 26, 2006 and, during that proceeding, denied the motion. On May 8, 2006, AMU filed this appeal seeking review, alleging the Justice of the Peace Court abused its discretion when denying the motion. On June 14, 2006, this Court heard oral argument on appeal. This is the Court's final decision and Order.

AMU alleges it was prepared to proceed in the Justice of the Peace Court on its motion to vacate the default and quash the writ of possession on April 26, 2006. According to AMU, the Judge "allowed both parties to make a brief opening statement," and "immediately following the opening statements, the Court recessed so it could 'look at the books.'" AMU further alleges that when the Court was prepared to resume, the parties sought additional time to continue settlement negotiations. The Court granted the parties' request, however, their negotiations were unsuccessful, and the hearing resumed. AMU next alleges, "immediately upon returning to the bench following the recess, and over AMU' objection, the Court below proceeded to announce its decision denying the motion, without giving AMU an opportunity to offer any evidence.

The Court's Order states as follow:

"4/25/06 THE ORIGINAL SUMMONS, WRIT OF POSSESSION  
AND MOTION NOTICE WERE ALL SENT TO THE SAME ADDRESS

2931 NORTH MARKET STREET. THE WRIT OF POSSESSION WAS POSTED ON THE STORE FRONT AND THE ATTACHED APARTMENTS PER CONSTABLE GAINES. THE COURT FINDS THAT THE DEFENDANT DID RECEIVE NOTICE, WHICH APPEARED TO BE PROPERLY SERVED, *AND THAT THE PROBLEM APPEARS TO BE THAT THE DEFENDANT HAS A LANGUAGE BARRIER*. MOTION TO VACATE DENIED. DEFENDANT SHOULD NOT BE ALLOWED BACK IN THE STORE TO REMOVE SPOILED CHICKEN AS REQUESTED.”

AMU seeks reversal of the Court’s denial on the basis that it was not afforded the opportunity to offer any evidence or argument in support of its motion to vacate and quash the writ of possession.

AMU argues that had it been afforded the opportunity to present its arguments, it would have shown that Shamshad, LLC failed to notify and name the proper parties in the original action and subsequent proceedings, which led the Court in granting Shamshad’s summary possession of the premises. Secondly, AMU argues it would have put forth credible evidence that Shamshad, LLC intentionally provided inaccurate information to the Justice of the Peace Court and the Constable regarding the location for service, posting of the return summons, and notice of summary possession. Third, AMU claims it would have shown that AMU was not in default of its lease. In response, Shamshad, LLC argues the Justice of the Peace Court conducted in a careful review of the file, found service was proper, and therefore did not abuse its discretion.

### **STANDARD OF REVIEW**

A motion to set aside a default judgment is addressed to the sound discretion of the trial Court. *Battaglia v. WSFS*, Del.Supr., 379 A.2d 1132 (1977). The Delaware Supreme Court has held that an appeal from a denial of a motion to vacate a default judgment review is limited to the decision denying the motion and does not bring for

review the case for trial *de novo*. *Ney v. Polite*, 399 A.2d 527 (Del.Supr. 1979). Review in these proceedings, therefore, is limited to the issue of whether the trier-of-fact abused its discretion.

### ANALYSIS

When considering the issue of judicial discretion, the Delaware Supreme Court stated:

“The essence of judicial discretion is the exercise of judgment by conscience and reason, as opposed to capricious or arbitrary action; and where a court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice, so as to produce injustice, its legal discretion has not been abused; for the question is not whether the reviewing court agrees with the court below, but rather whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made. Where, however, the court in reaching its conclusion overrides or misapplies the law or the judgment exercise is manifestly unreasonable, an appellate court will not hesitate to reverse.” *Pitts v. White*, 109 A.2d 786, 788 (Del.Supr. 1954) (Internal citations omitted).

Judicial discretion requires action in conformity with law on the facts and circumstances before the court after hearing and due consideration. A reviewing court is never justified in substituting its discretion for that of the court which is the subject of review. The question is, however, whether the decision subject to review is the product of logic based upon the facts and reasonable deductions to be drawn therefrom.

It has been held that, “abuse of discretion occurs when the judgment exercised by the trier-of-fact is manifestly unreasonable.” *General Motors v. Farmer*, Del. Super., C.A. No. 89A-DE-10, Del Pesco, J. (1990). An abuse of discretion occurs if the trial court’s decision is based on “clearly unreasonable or capricious grounds.” *Bultron v.*

*State*, 897 A.2d 758, 762 (Del. Supr. 2006) citing, *Wright v. State*, 768 A.2d 472 (Del.Supr. 2001) (Order).

The record indicates the Justice of the Peace Court when considering the motion to vacate, took a recess to “look at the books” and shortly thereafter made the determination that service upon AMU was proper and sufficient without permitting testimony or taking additional evidence which AMU was prepared to present. AMU was not afforded the opportunity to present evidence in the form of documents, testimony, or otherwise to have its allegations considered. Instead AMU was merely permitted to deliver an opening statement. The record does not reflect there was any consideration of the allegation that a named party to the lease was not joined in the proceedings.<sup>1</sup> Furthermore, the Court concluded the defendants had a language barrier; however, found that service and notice was proper.

In light of these allegations and the failure of the Court to conduct a hearing giving the parties an opportunity to have their positions considered, it is difficult for one to conclude there was due consideration of AMU’s claims. Moreover, it is difficult to see how the Court could reconcile its conclusion that there was a language barrier and, also conclude that service and notice of the original trial was legally sufficient. The further question is whether this is consistent with the underlying principle of access to justice, when there is a question of whether the defendant understood the documents.

If AMU was afforded a hearing, AMU could have reasonably put forth evidence tending to show that the outcome of the Justice of the Peace Court’s decision to grant possession would be different. When considering the substantial prejudice to AMU and

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<sup>1</sup>A review of the lease does indicate the parties thereto are Pezavia O. and Mary E. White (Landlord) and AMU Corp. Mohammed Shafiky – Name Kennedy Fried Chicken (tenant)

Mohammed Shafiky, a party to the lease which was not named in the proceeding, at a minimum, they are entitled to a trial on the merits. Accordingly, the Justice of the Peace Court's order denying the motion to vacate and quash possession is reversed. The case is remanded for trial on the merits.

SO ORDERED this 30<sup>th</sup> day of June, 2006

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Alex J. Smalls  
Chief Judge

AMU-OP Jun 06